

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

TREVOR MILTON,

Defendant.

x No. S1 21 Cr. 00478 (ER)
:
: **DEFENDANT'S NOTICE OF**
: **SUPPLEMENTAL AUTHORITY**
: **REGARDING HIS RENEWED**
: **MOTION TO DISMISS CHARGES**
: **OF SCHEME LIABILITY OF**
: **COUNT ONE OF THE**
: **INDICTMENT**
x

Defendant Trevor Milton submits this Notice of Supplemental Authority concerning *SEC v. Rio Tinto PLC*, No. 21-2042 (2d Cir. July 15, 2022), which is attached. In *Rio Tinto*, the Second Circuit held that the Supreme Court in *Lorenzo v. SEC*, 139 S. Ct. 1094 (2019), did not overrule or otherwise abrogate *Lentell v. Merrill Lynch & Co.*, 396 F.3d. 161 (2d Cir. 2005). The *Rio Tinto* decision directly supports Mr. Milton's Motion To Dismiss Charges of Scheme Liability Under Count One of the Indictment ("Motion to Dismiss Scheme Liability"), which relies upon *Lentell* and the district court's opinion in *Rio Tinto*. See ECF 49 at 6–8, 10. Contrary to the government's assertion in its Memorandum of Law in Opposition to Defendant's Pretrial Motions, ECF 71 at 25–26, the law in the Second Circuit remains that scheme liability under Section 10(b) and Rule 10b-5(a) and (c) of the Exchange Act requires fraudulent conduct beyond misstatements and omissions. *Rio Tinto*, No. 21-2042, slip op. at 16–17. Mr. Milton renewed his Motion to Dismiss Scheme Liability on July 11, 2022 in light of the Superseding Indictment. ECF 152.

Dated: July 16, 2022

Respectfully submitted,

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